

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF UTAH, WITHIN AND FOR CARBON COUNTY

MARY AMBROSIO,

Plaintiff.

vs.

MARYETTA BERTOLINI, and
BRAZILLE BERTOLINI,

Defendants.

)
)
) FINDINGS OF FACT AND CONCLUSIONS
) OF LAW
)

This action came on regularly before the Court in Price, Barbon County, State of Utah, sitting without a jury on the ____ day of December, A. D. 1931, Knox Patterson, Esq., representing the plaintiff and Messrs., Clay and Bosone, Esqs., representing the defendants and the testimony having been heard on behalf of the plaintiff and the defendants, and the Court having heard the argument of counsel in said action and having also duly considered the briefs filed by the respective parties herein, NOW FINDS;

1. That for many years last past plaintiff was and now is the owner and entitled to the exclusive use and benefit of all of the waters of Spring Canyon Wash and the springs and drainage area thereof in Carbon County, State of Utah, for irrigation and domestic purposes; for the irrigation of sixty (60) acres of Agriculture land in the North one-half ($N\frac{1}{2}$) of the Northeast one-quarter ($NE\frac{1}{4}$) of Section twenty-three (23), of the North one-half ($N\frac{1}{2}$) of the Northwest one-quarter ($NW\frac{1}{4}$) of Section twenty four (24), Township 13 South, Range 9 East, S. L. M., and for domestic purposes upon said premises; save and except for a period of twenty four (24) hours in each seven (7) days beginning at six o'clock A. M. on each Sunday and continuing until six o'clock the succeeding day.

2. That during the year 1929, the said defendants without right and unlawfully and without the consent, and over the protests of the plaintiff sunk a collecting reservoir on said Spring Canyon Wash at a point thereon near what is known as Goat Springs and constructed therefrom a pipe line to the home and residence of the defendants, and have continuously during the year 1929 and 1930 and up to the day of the hearing of said case, diverted and continued to divert from said Spring Canyon Wash and from the drainage area what is approximately one-eighth of one cubic foot of water per second; and that if said water had not been so diverted, it would have flowed directly into Spring Canyon Wash and would have been available to the plaintiff for the irrigation of her said lands, and for domestic uses.

3. The land so irrigated as aforesaid by the plaintiff in their natural state are dry and barren and will not produce crops or garden produce without being irrigated, but if irrigated will produce an abundance of alfalfa and garden produce.

4. That by reason of the wrongful and unlawful appropriation of the waters by the defendants as aforesaid, the plaintiff has suffered great and irreparable damages.

The Court finds that all the allegations of the plaintiff's First Cause of Action have been sustained by preponderance of the evidence.

The Court finds with reference to the Second Cause of Action that no substantial damages have been proven by the plaintiff but that there is sufficient evidence to sustain a finding of a nominal damages for the plaintiff and the Court does find on plaintiff's Second Cause of Action that the plaintiff was damaged in the sum of \$1.00.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court concludes as a matter of law that a restraining order of this Court should issue perpetually restraining and enjoining the defendants, their servants, agents and employees and all persons claiming under them from diverting the waters of Spring Canyon Wash, Carbon County, State of Utah, which at all times, save and except for a period of twenty-four (24) hours in each seven (7) days, beginning at 6 o'clock A. M., on each Sunday and continuting for a period of twenty-four hours successively thereafter, and specifically the defendants should be restrained from collecting the waters thereof into the collecting reservoir near Goat Springs on said Spring Canyon Wash by means of a pipe line to the home and residence of the defendants, or elsewhere.

The Court concludes also that plaintiff should have judgment against the defendants for the sum of \$1.00 damages on the plaintiff's Second Cause of Action.

Dated this 15th day of March, A. D. 1932.

Nephi J. Bates
Judge.